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»In the Name of the Law«. Organisation and Functioning of the Polish (non-German) Judiciary in the General Government (German-Occupied Poland) in the Period of 1939 to 1945*

Hubert Mielnik

1. Introduction

The General Government (hereinafter GG)[1] was a part of the territory of the Polish state occupied by the German Reich. At the time, the occupation was regulated by the Fourth Hague Convention, to which both Germany and Poland were parties as of 1939.[2] The German occupant, who was a party to the Convention, was obliged to comply with the provisions thereof. In Article 43, the Convention stipulated that the occupying force »shall take all the measures in his power to restore and ensure, as far as possible, public order and safety, while respecting, unless absolutely prevented, the laws in force in the country«[3]. This provision provided the basis for the continued functioning of the judiciary that had operated prior to the occupation. This was the case in the General Government. The German authorities decided, as in most countries of occupied Europe, to leave common courts for the local population. The courts of the GG were even referred to as the »Hague courts«, and the GG authorities used them as an example of how actions taken in the occupied territories complied with international law.[4]

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1 For more detail on the General Government, see: Winstone (2015).

2 Convention (IV) respecting the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land (adopted 18 October 1907, entered into force 26 January 1910, hereinafter: the Hague Convention). On problems of the legal nature of the occupation of the GG see also: Lubecka (2022) 172–173.

3 The Hague Convention, art. 43.

4 Klafkowski (1946) 64–65. Doctor Albert Weh responsible for the legislation in the GG wrote in 1943 that the existence of Polish (non-German) judiciary was a manifestation of »natural autonomy«. Weh (1943) 73.

The aim of this article is to present the main and most important aspects of the organisation and functioning of the Polish (non-German[5]) judiciary operating in the General Government. The article aims to answer the following research questions: What changes were introduced by the occupying German authorities to the pre-war system of common courts? What kind of supervision, and of what nature, did the German authorities exercise over the Polish judiciary? What was the position of these courts in the GG judicial system? What laws were applied by these courts? What types of criminal and civil cases were decided by the Polish courts, both objectively and subjectively? How were cases involving the Jewish population handled in practice?

In order to address these research questions, first of all, an analysis of the laws issued by the German authorities in the GG was conducted. A peculiarity of Nazi law, and more broadly of the laws of autocratic states,[6] was the validity of laws that were not officially promulgated. These encompassed various ordinances, circulars instructions and orders, which were duplicated using machines and distributed among the entities responsible for implementing the law. The recipients of these norms had very limited access (or no access at all) to the regulations applicable to them. This forces a researcher of the legal institutions of that period to look for these sources of norms through archival research. Therefore, this article will be based on the analysis of selected archival sources. The author personally translated all citations appearing within the text.

The paper is intended to fill the existing gap in studies published in congressional languages concerning the judiciary of the General Government. In recent years, several studies have emerged on the issue of the judiciary in states occupied by the Third Reich. These include, in particular, the works by Hans P. Graver,[7] Jaromir Tauchen,[8] Jan Julia Zurné[9] or the collective work edited by Derk Venema, which looks into the supreme judiciary in Third Reich-occupied Europe.[10] Studies on the judiciary in the Polish areas incorporated into the Reich have also been published, most notably those by Maximilian Becker[11] and Konrad Graczyk.[12] However, there is a noticeable lack of studies on the problems of the judiciary concerning the General Government, especially with regard to the Polish courts. The most important study remains the comprehensive monograph by Diemut Majer.[13] There are also very few works in Polish that touch upon this subject. The most comprehensive studies in Polish are the

[5] The author will exclude the parenthetical explanation (non-German) of the official name in the following parts of the text. This name will be exclusively utilized in the subsection titles. Subsequently, the parenthetical name will be explained later in the text.

[6] R. Pipes notes that law of that kind appeared e.g. in the Tsarist Russia in the 1870s and 1880s during the period of increased repressiveness of the Russian state. Pipes (2022) 298–304.

[7] Primarily: Graver (2015); Graver (2018).

[8] Tauchen (2020).

[9] Zurné (2021); Zurné (2022).

[10] Venema (2022).

[11] Becker (2014).

[12] Graczyk (2021).

[13] Majer (2013).

publications by Andrzej Wrzyszcz[14] (regarding the German judiciary) and Hubert Mielnik[15] (with regards to Polish judiciary).

The primary objective of this article is to contribute, at least in part, to bridging this gap. This study aims to present the most important issues related to the organisation and operation of the Polish judiciary in the GG and characterise them in accordance with contemporary understanding. The article will endeavour to prove that the Polish judiciary was an element of the normative sphere and operated under and within the limits of the law, primarily the legislation that prevailed before the outbreak of the war. The common judiciary was left in the General Government to ensure further legal and economic transactions in the GG, which enabled even more effective economic exploitation of these areas. The research will supplement the existing understanding of judicial systems and legal dynamics during World War II with an important and distinct example of the General Government, a segment of the Polish lands occupied by the German Reich.

2. Organisation of the Polish (non-German) judiciary in the General Government in 1939-1945

The General Government was instituted through the decree of the Führer and Chancellor of the German Reich on the administration of the occupied Polish territories on 12 October 1939.[16] This decree stated that existing laws »so far in force,« were to remain effective, provided they did not prevent the takeover of administration by the German Reich (§ 4). This study is not intended to discuss in detail the intricacies of the legal system in the GG. However, it must be noted that apart from the conditional retention of Polish law, the GG was also under legislation issued by the German authorities. The power to issue the law in the form of regulations (Verordnung) was vested in General Governor Hans Frank[17], also to the chairman of the Council of Ministers for the Defence of the Reich, and to the Reich Plenipotentiary of the Four Year Plan (§ 5). The other supreme authorities of the Reich could extend the applicable legal acts to the GG if this was justified by the »planning of the German living and economic space« (§ 6). In practice, it became evident that the GG's main lawmaker was Hans Frank. Regulations were published in the official gazette known as the »Verordnungsblatt des Generalgouverneurs für die Besetzten Polnischen Gebiete« (»Gazette of Regulations for Occupied Polish Areas«, hereinafter Dz.ROP), which was later renamed

[14] Wrzyszcz (2008); Wrzyszcz (2012).
[15] Mielnik (2020b).
[16] Reichsgesetzblatt I 1939, 2077.
[17] Hans Frank possessed a Ph.D. (Dr. Jur.) in law. Among his various roles, he served as the President of the Academy for German Law, Bavarian Minister of Justice, and founder and leader of the National Socialist German Jurists Association. For more information on Hans Frank's biography see: Schenk (2006).

to »Verordnungsblatt für das Generalgouvernement« (»Gazette of Regulations for the General Government«, hereinafter: Dz.RGG).[18] The GG legal system was complicated, because alongside pre-war Polish law, which was derogated and amended by GG legislation, while also incorporating German Reich law.[19] The authorities applying the law used to encounter numerous difficulties in understanding which rules in a given situation should be applied.[20]

The first legal acts that were officially issued by the Governor General Hans Frank on the day of the GG's establishment on 26 October 1939, included regulations concerning the structure of the legal and judicial system within the GG. The first regulation on the reconstruction of the administration in the occupied Polish areas of 26 October 1939,[21] reiterated the provision that Polish law remained in effect, but again on the proviso that it should not prevent the takeover of the administration by the German Reich and the enforcement of German military laws. Another legal act, published within the GG, was the regulation on the reconstruction of the judiciary in the General Government of 6 October 1939. This regulation introduced the fundamental principles of the judicial system within the GG.[22] The first paragraph stated that the German and Polish judiciaries would operate within the GG. The responsibilities were defined as »the prosecution of attacks on the security and authority of the Reich and the German Nation, and the life, health and property of ethnic German citizens«), and the personal jurisdiction of the German judiciary (» as ethnic German citizens with the entirety of their legal relations are subject to the German judiciary«). Important in the context of the subject matter of the article was another provision, according to which a German judge could verify final rulings issued by Polish courts. Where the judgement was set aside, the case could be referred to the German judiciary for consideration. These principles formed the basis for the organisation and functioning of the judiciary in the GG.

The most characteristic trait of the entire legal and judicial system within the GG was that of legal colonialism. Polish pre-war law was subject to conditional application, being as it used to be amended at will and adapted to the policy pursued by the German authorities. On the other hand, the Polish courts could continue to operate, but their substantive judicial activities were subjected to direct supervision. The German authorities had the opportunity to re-open final rulings, even those issued before the outbreak of the war in 1939. The means and forms of supervision will be described further herein. However, it can already be pointed out that these actions violated all the fundamental principles of the rule of law regarding the independence of courts and judges. In terms of propaganda, the supervision over Polish courts was probably not intended to signal the occupant's willingness to review the application of law by these courts and the compliance of their judgements with intended political objectives. Instead, it primarily reflected the necessity for German lawyers to intervene in Polish judgements, and thereby highlighting the perceived inefficiency of Polish judges and

18 For more detail on the legislation in the General Government, see: Wrzyszcz (2014a).
19 On the GG's legal system: Mielnik (2020b) 127–145.
20 This was one of reasons for introducing legal theses, as referred to in the further part hereof.
21 Dz.ROP 1939, 1, 3.
22 Dz.RGGOP 1939, 1, 4.

the shortcomings of Polish law. Hans Frank even stated in his diary that the Polish population, owing to the noticeable domination of the German judiciary over the Polish one, was expected to place greater trust in German judges.[23]

The establishment of a separate judiciary for the German population was a blatant violation of the principle of the universality of law and the judiciary. Kurt Wille explicitly stated that the German judiciary was to ensure that the Germans be administered justice from the hands of a German judge.[24] Polish courts could scarcely perform any procedural actions regarding persons of German nationality, ethnicity, and origin. The exception was proceedings concerning land and mortgage registers, which will be discussed later.

Noteworthy is the focus on criminal law. This responsibility of the German judiciary directly refers to the safeguarding the German presence on occupied Polish territory. This would be reflected in the legal acts issued by the Governor General in the later years of the occupation, which to a large extent contained criminal-law norms and sanctions.[25]

The process of building the justice system within the General Government took several months and was finally completed in February 1940, when three legal regulations on common courts were issued. However, in the first months of the existence of the General Government, the status of German special courts, already operating during the period of military administration, as well as police summary courts, was officially regulated. Both types of these courts were tasked with adjudicating criminal cases, although the summary courts were in fact a tool of terror and repression.

The three basic regulations concerning common courts in the GG are: the regulation on the German judiciary,[26] the regulation on the Polish judiciary,[27] and the regulation on the transfer of legal cases between the German and Polish judiciaries.[28] They were all published in one issue of the Gazette of Regulations of the General Government for the occupied Polish territories of 24 February 1940. Together with the aforementioned regulation on the reconstruction of the judiciary in the General Government and the regulation on special courts in the General Government, they constituted the legal basis for the functioning of the judiciary in the GG.

For the purposes of this paper, the regulation concerning the Polish judiciary will undoubtedly hold the utmost significance. Although some solutions permeated in individual divisions of the judiciary, it will be inevitable in the subsequent sections of this article to refer to other legal acts as well. The organisational basis for Polish courts in the General Government was the Ordinance of the President of the Republic of Poland of 6 February 1928, known as the Law on the System of Common Courts.[29] The provisions introduced in the

[23] Wrzyszcz (2008) 64–65.
[24] CAMR, Wille Report, 256.
[25] Mielnik (2020b) 155.
[26] Dz.ROP 1940, part I, 13, 57–63.
[27] Dz.ROP 1940, part I, 13, 64–68.
[28] Dz.ROP 1940, part I, 13, 68–71.
[29] Dziennik Ustaw RP 1932 No. 102, item 863, as amended, consolidated text.

General Government, however, changed and adapted the pre-war system with the realities of occupation, as planned by the German authorities. The regulation on the Polish judiciary consisted of twenty sections grouped into six chapters. In later years, five executive regulations[30] were issued in conjunction with the regulation concerning the Polish judiciary. After the Third Reich's attack on the USSR in 1941, the fifth district of Galicia was established, to which the judiciary system of the General Government was extended by separate legal acts.[31]

From an organisational point of view, the most important change compared to the pre-war judiciary system of the Second Polish Republic was the dissolution of the Supreme Court. Formally, the regulation concerning the Polish judiciary stipulated that the Supreme Court was »temporarily not operating«. However, this period lasted throughout the entire occupation. The reason for the dissolution of the highest-instance court was most likely based on the intention of the German authorities to avoid establishing central bodies of any authority exercised by non-Germans. This change resulted in the exclusion of the possibility to file a cassation appeal in court proceedings within the GG. As a result, the common judiciary lost the institution designed to unify case-law and resolve doubts of an interpretational nature.[32]

The Polish judiciary in the GG, therefore, consisted of municipal courts, district courts, and courts of appeal. An important principle was the alignment of judicial appellate districts with the boundaries of administrative districts. This necessitated the establishment of a new court of appeal in Radom, which had not previously existed. The adjustment to the administrative boundaries of the districts also resulted in changes to the territorial scope of the jurisdiction in some municipalities. In 1944, specifically at the conclusion of the existence of the GG, there were five courts of appeal, twenty-two district courts, and 241 municipal courts within the Polish judiciary.[33]

Other changes introduced to the pre-war judicial system included the abolition of labour courts, which had allowed for simplified enforcement of employee rights. Non-career judges (lay judges) were excluded from adjudicating in all types of proceedings. Judgements were to be issued by Polish courts with the neutral formula »In the name of the law,« as had been the case during the German-Austrian occupation of Polish lands during the First World War. German courts delivered their judgements »In the name of the German Nation«. Another change involved the replacement of mortgage officers, who had been operating in the former

[30] Durchführungsvorschrift zur Verordnung vom 19. Februar 1940 über die polnische Gerichtsbarkeit im Generalgouvernement 1.8.1940 Dz.ROP, part II 49, 411–412; Zweite Durchführungsvorschrift zur Verordnung vom 19. Februar 1940 über die polnische Gerichtsbarkeit im Generalgouvernement 26.6.1942 Dz.RGG 56, 353–355; Dritte Durchführungsvorschrift zur Verordnung vom 19. Februar 1940 über die polnische Gerichtsbarkeit im Generalgouvernement 20.10.1942 Dz.RGG 91, 655–656; Vierte Durchführungsvorschrift zur Verordnung vom 19. Februar 1940 über die polnische Gerichtsbarkeit im Generalgouvernement 21.10.1942 Dz.RGG 91, 656; Fünfte Durchführungsvorschrift zur Verordnung vom 19. Februar 1940 über die polnische Gerichtsbarkeit im Generalgouvernement 16.4.1943, Dz.RGG 31, 176–177.

[31] Wrzyszcz (2003).

[32] Mielnik (2020b) 62–67.

[33] Mielnik (2020b) 107–110.

Kingdom of Poland since 1818, with municipal judges. However, this was a rather cosmetic change, as the German authorities believed that the collection of payments by the mortgage officers encouraged various forms of abuse.[34]

Significant, from the organisational point of view, was administrative supervision which was transferred to the district heads (governors). Most of the supervisory powers over the Polish courts were exercised by German justice ministries located within the district's administrative structure. There was additionally a central ministry of justice within the Government of the GG, headed by Kurt Wille. The system of adapting the judicial territorial structure to the district boundaries and subjecting Polish courts to the supervision of the German authorities at the district level meant that there were four (and five following the establishment of the Galicia district) judicial areas within the GG. Administrative supervision was carried out by issuing orders, circulars, and other executive acts. The regulated questions ranged from personnel issues, judges' and other court employees' salaries, building management, court operations, and more important issues, including interactions with other authorities in the GG, such as the police. The district justice departments acted as intermediaries in various interactions, such as the implementation of judicial assistance, between the Polish courts and other administrative authorities, both within the GG and in other territories. Particular emphasis was placed on the severity of judgements in criminal cases and austerity regarding spending.[35]

The literature cites opinions that characterise interactions with the justice departments as substantive and ideology-free. German authorities also expressed positive opinions regarding their cooperation with Polish courts. Ludwig Fischer, the governor of the Warsaw district, stated in his reports that: »The activity of the Polish courts raised no reservations«.[36] »Based on past experience, it can be said that no conflicts have ever occurred in the Polish judiciary«.[37] Other German administrative bodies also tried to influence the activities of Polish courts. Instances of interference in judicial decisions and the delivery of specific judgements occurred primarily in municipal courts, the lowest level of the judiciary. This interference often came from powiat (county) governors (Kreishauptmann) and powiat (county) agronomists (Kreislandwirt)[38]. The German authorities at the powiat level tried to subjugate all the institutions operating within their territory, including the Polish courts. Interventions of this kind mainly concerned matters relating to agricultural activity and agricultural property. This certainly involved supporting certain individuals, potentially litigants with corrupt tendencies. There were situations where judges were threatened that they would be detained if they failed to make the »right« decisions. Judges from Polish courts reported instances of attempts to influence the supervising ministries of justice, pointing out that such cases violated

[34] CAMR, Wille Report 262.
[35] Mielnik (2020b) 436.
[36] Dunin-Wąsowicz (1987) 234.
[37] Dunin-Wąsowicz (1987) 162.
[38] Mielnik (2022) 119–138.

the dignity of the GG judiciary.[39] The justice departments responded directly that the Polish courts were subject only to the authority of the Ministry of Justice and should not respond to such attempts to exert influence. Judge Kazimierz Daszyński, who was employed at the Court of Appeal in Radom during the war, provided the following testimony after the war:

> The starostas (Kreishauptmanns), and especially the powiat agronomists (Kreislandwirts), generally were hostile towards the Polish judiciary and did not want to recognise and respect their judgments at all. The struggle to enforce that Polish judgements be respected was one of the most difficult tasks of the President, Dr. Prądzyński, also because municipal judges or presidents of district courts, when reporting on cases of disregarding Polish judgements, generally reserved not to disclose these cases for fear of persecution. In each case, the difficulties consisted in keeping the judge out of risk and, nevertheless, that the German official concerned was properly reprimanded. As I recall, Dr. Prądzyński has never been silent about such blatant abuses of German officials, struggling for respect for Polish judgements persistently, consistently and with good effect. By raising such cases in a very skilful manner at the Justice Department, he obtained either the issue of the relevant circular or even an admonition for the official concerned in such a way that it did not affect the judges.[40]

Situations where cases or defendants were taken over by the German police authorities, mainly the security police (Gestapo, Kripo), should be approached differently. In such cases, Polish courts had to comply fully. According to a report on the subject of the Polish judiciary, officers of the so-called Polish Blue Police (Polnische Polizei im Generalgouvernment) purportedly exerted pressure on judges and parties involved in civil proceedings.[41]

At the very beginning of the occupation, there were instances of retaliation against judges and prosecutors due to verdicts issued before the war in cases involving ethnic Germans. The most famous case took place in Krakow, where two judges and a prosecutor[42] were arrested and subsequently killed for sentencing a German, who later joined the Gestapo in 1939, to one year in prison for insulting the Polish nation in 1938.

The activities of Polish courts were also, albeit at varying degrees of pressure, influenced by the Wehrmacht. In June 1941, certain courts located along the eastern border had to make court premises available to German troops preparing for an offensive against the USSR, which made adjudication much more difficult or rendered it completely impossible.

Of greater importance was undoubtedly the substantial (judicial) supervision exercised over the judicial decisions of Polish courts. This supervision was partly left to the Polish courts themselves. The dissolution of the Supreme Court and numerous interpretive doubts related to the chaotic and unclear legal system of the General Government forced the German authorities to delegate the authority to issue legal theses to the courts of appeal. From a formal point of view, the legal theses were based on solutions adopted in issuing pre-war legal principles of the Supreme Court and published rulings. In each of the districts, a different procedure for issuing theses was applied, and the form of their publication differed also.

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[39] Mielnik (2020b) 86–87.

[40] SAR, Prądzyński Case 41, Protokół przesłuchania Kazimierza Daszyńskiego z 18 maja 1945 roku.

[41] CAMR, Polish Underground State Report 46.

[42] Namely judge of the District Court in Cracow Władysław Bobilewicz, judge of the Court of Appeal Konrad Frąckiewicz and prosecutor of the District Court Andrzej Łada-Bieńkowski. Nn (2021) 192–193.

A special Office of Jurisprudence was established at the Court of Appeal in Warsaw, which took over the library of Supreme Court rulings. The Warsaw theses were published on a quarterly basis in special bulletins. In other courts, they were compiled into volumes of legal theses and then disseminated using copying machines for distribution. Legal theses were also sent between the courts within individual districts, thanks to which the lines of case-law were unified and information about the resolution of the most important legal issues was communicated throughout the General Government. These rulings were not obligatory for the courts in the GG, unless they were issued based on a point of law raised in a specific case. In such cases, the court adjudicating in a given case was obliged to accept the interpretation. Due to the lack of professional legal literature, often lost or destroyed, and the lack of access to an official gazette in the General Government, their function was not only the unification of case law but also professional education.[43]

From the perspective of the German authorities, more important was the institution of judicial supervision, already announced in the regulation concerning the restructuring of the judiciary – the right of verification. This procedure was regulated in the provisions §§ 16-18 of the regulation on the Polish judiciary. The head of the Department of Justice within the Office of the District Head (Governor) had the power to initiate an initiative to check final rulings (decisions and judgements) issued by Polish courts. The criterion for initiating the verification was the consideration of public interest. A request for the verification was to be filed with the higher German court within six months of the finalisation of the decision to be examined. Rulings that were final upon the enactment of the regulation could be verified if they were issued after 31 July 1938. In the case of a violation of the »interests of the German Nation«, judgements could be verified regardless of their date of issue. The higher German court could either approve the decision or judgement under verification, revoke it and decide the case itself or remand the case to a German court (of a lower level; particularly if an evidentiary hearing was necessary).[44]

When assessing the institution of the right of verification, the created system of division of jurisdiction within the GG between different courts must be taken into account. This issue will be described in detail further in this article. A quite detailed division of jurisdiction was introduced, so that all types and categories of matters in the resolution of which the German authorities held an interest were placed under the jurisdiction of the German judiciary. However, reality cannot always be enclosed in general and abstract norms. Therefore, a procedure was created to permit the verification of final rulings of courts, so that it would be possible to check and possibly change rulings rendered contrary to the interest of the German authorities. From a purely juridical perspective, the right of verification had the character of an extraordinary appeal. It was one of the many solutions introducing colonial solutions of subordination and curtailing the independence of the Polish courts.

[43] Mielnik (2021a); Mielnik (2021b).
[44] Mielnik (2020a).

The research shows that the term »public interest«, which constituted the criterion for initiating the entire procedure, was in practice tantamount to the objectives of the policy pursued by the German Nazis in the GG. The surviving case files show that this institution served the purpose of amending and setting aside judgements that were incompatible with said policy. The aim was primarily to ensure that the judgements issued did not prevent the economic exploitation of the local population that was being carried out, such as by reducing agricultural property or by adjudicating in-kind benefits. Verification was predominately performed in civil cases; in criminal cases, proceedings were initiated to increase the legal protection of those working in an official capacity, such as a prison guard or a deputy mayor. Another example is when Polish courts handle a case that, according to German regulations, should have been decided by a German special court. Rulings of higher German courts were in line with requests made by administrative authorities. In this area, the German judiciary within the GG did not have an autonomous, independent position; instead, it pursued specific political goals.[45]

In June 1941, the Third Reich started a war with the USSR. Consequently, German forces seized the territories of the Second Republic of Poland that had been under Soviet occupation since 1939. The fifth district of the GG, Galicia, was established from a portion of this territory. The district of Galicia was mostly inhabited by ethnic Ukrainians. The systemic and administrative arrangements previously adopted in the original area of the GG, including the judiciary, were expanded to encompass the territory of the new district. The law applicable as of 31 August 1939 was also reinstated. Apart from the German judiciary, the secondary tier of common courts was supposed to be »non-German courts«. It was not just about renaming. The designations used in the GG for their institutions and entities, such as the Polish judiciary, the Polish Police of General Government (Polnische Polizei im Generalgouvernement, Polish Blue Police), the Ukrainian Auxiliary Police (Ukrainische Hilfpolizei), and the Jewish Police Service (Jüdischer Ordnungsdienst), were ethnically oriented rather than state-centric in nature. That is to say, they referred to the population for whom the service was formed; the body and officers (officials, lawyers) who worked with the entity concerned, and not to statehood continuity, autonomy, or independence. The official change of name from the »Polish judiciary« to the »non-German judiciary«, which was first carried out in the district of Galicia and then throughout the GG, emphasized the shift in focus from the purpose of serving the Polish population to also embracing the Ukrainian population.

The main difference in the non-German judiciary in Galicia was the adoption of Ukrainian as the language of legal proceedings, while in the other districts, Polish was used. In the areas of municipal courts, inhabited by at least one-fifth of the Polish population (Galicia) and Ukrainian (in the original four districts), it was possible to use the language of the minority during the hearings and in court procedural documents. This possibility also applied to proceedings before higher courts. Since October 1942, in the original four districts, where more than 50% of the population within a municipal court's jurisdiction were Ukrainians,

[45] Mielnik (2020a).

Ukrainian became the language of procedure. No similar regulation was provided for the Polish language in the district of Galicia.[46]

3. Functioning of the Polish (non-German) judiciary in the General Government in 1939-1945

The jurisdiction of the Polish judiciary with respect to subject matter is succinctly addressed in the regulation on the Polish judiciary. In accordance with section 1(1), Polish courts could hear the case if it was not covered by the jurisdiction of German courts. Additionally, in criminal cases, if the case had been transferred by the German prosecution authority (prosecutor's office). To establish the legal grounds for subject-matter jurisdiction, it will be necessary to determine which cases were considered by the German courts, as the remaining cases belonged to the jurisdiction of Polish courts. The main criterion was, of course, the nationality (ethnic origin or citizenship) of the parties involved in the proceedings (interveners). If persons or entities recognized by law as German appeared in the case in any role (even as witnesses), the case had to be adjudicated by a German court. In civil matters, the legislation introduced in the GG defined very precisely the division of jurisdiction between the various branches of the judiciary in the GG.[47] No major disputes or problems related to the division of jurisdiction in civil cases arose in the activity of the Polish judiciary. An exception pertained to matters concerning land and mortgage registers, where the German authorities chose not to create a new system or delegate these matters to German courts. Entities with German national affiliations were granted a special opportunity to challenge, in proceedings before German courts, judgements of Polish courts in cases concerning land and mortgage registers, if they were »affected« by those decisions. Leaving the land and mortgage registers within the competence of Polish courts led to these courts, at the request of German administrative authorities (mainly trusteeship departments), making entries regarding the seizure of Jewish properties. It should be noted, however, that these entries were not constitutive and did not create new rights. The seizure was carried out based on decisions made by the German administrative authorities. At the same time, the applications submitted to the courts were often very imprecise regarding which property was to be seized, resulting in many practical problems.[48]

The issue of the division of jurisdiction in criminal matters looked different. As described above, there were several specialized types of criminal courts in addition to the German general courts in the GG, notably the German special courts. The regulation on the German

46 Mielnik (2020b) 74–81.

47 The main criterion of division was, as stated, the specific nationality of the legal entities concerned. More detail in: Mielnik (2020b) 105–107.

48 Mielnik (2020b) 377–382.

judiciary in the GG provided that German criminal justice applied to individuals of German nationality and those who belonged to the German nation. Moreover, the German courts had jurisdiction over other persons, namely non-Germans, in cases involving criminal acts aimed at undermining the security and authority of the German Reich and the German nation, as well as acts against its interests and the life, health, dignity, and property of persons of German nationality or ethnicity. This also encompassed offences penalised under the legislation introduced in the GG. It applied to acts committed in a building, premises, or establishment serving the purposes of the German authorities, or if the acts were committed while »serving for the German management or in connection with that service«. All other participants in the offence, such as accomplices, collaborators, and criminal intermediaries, were also subject to the German judiciary.[49] The jurisdiction of German special courts could be derived either directly from the law or the case could be referred to those courts because of the »serious or deplorable nature of the act or the public outrage«.[50]

Criminal cases within the GG, apart from those taken over by the police and SS authorities, were handled by the German public prosecutor's office. Each criminal case, prior to an indictment in court, was assessed by the prosecutor's office as to whether there were grounds for the jurisdiction of the German courts, or more specifically of a German special court. If not, the case was considered by a Polish court. It was a vague and complicated system. The jurisdiction could also change during the course of judicial proceedings if the prerequisites for the case to be examined by a German court appeared or disappeared (for example, it turned out that the victim was Ukrainian rather than German). As a rule, the German courts had jurisdiction in cases of economic crimes. Political crimes (directed against German authority) were mainly the responsibility of summary police courts. With regard to common crime, on the other hand, everything depended on the circumstances of the offence. It is challenging to indicate that a particular type of criminal act was considered by a specific court. This issue was more fluid and resulted from a particular decision of the German prosecutor, depending to a large extent on the circumstances of the case. For example, a case of a Pole murdering another Pole while working in a German factory would be heard by a German court. If the perpetrator had already been convicted or had committed his act with particular brutality, the case would be heard by a German special court. Conversely, a homicide involving Poles that occurred during a wedding party, for example, would probably be heard by a Polish court. In special circumstances, the case could be referred to a summary police court.

The whole system of determining jurisdiction in criminal cases was intended to prevent the infringement of any German interests and to extend the criminal-law protection of specific persons, entities, and overarching policy objectives. German special courts in the GG, in line with Nazi views on criminal law and so-called martial criminal law,[51] dealt with cases involving certain newly defined categories of offenders as stipulated by Nazi legislation within

[49] Regulation on the German judiciary, § 7 (3).
[50] Regulation on the German judiciary, § 2 (2).
[51] Kalmbach (2015); Pauer-Studer (2020) 102–115; Vormbaum/Bohlander (2012) 194–195.

the Third Reich. Kurt Wille, who headed the Main Justice Department of the Government of the GG wrote that: »a criminal judge, in combating the banditry that was widespread in Poland even before the war – and to an extent that was simply unimaginable in comparison with German relations – necessarily needs the weapon of German criminal law with its effective provisions against violent offenders and professional criminals«.[52]

The method of allocating jurisdiction among various types of courts, which was very rigid in civil cases, while in criminal cases being controlled by the German prosecutor's office, meant that there was no need, from the point of view of the German authorities, for extensive and frequent interference in the decisions of Polish courts. Hence, the quasi-autonomous position of those courts, since they could, in fact, retain a certain degree of independence in cases entrusted to their jurisdiction. Possible individual mistakes, rulings inconsistent with German interests, and policies pursued within the GG were subject to review as part of the verification procedure, since the whole system was based on the principle: »The last German must stand before the first Pole«.[53] Polish courts were also obliged to inform the security police apparatus of all decisions made in criminal cases.

In terms of civil cases, the prevailing type during the occupation was cases related to obligations law, particularly those involving the payment of a specific sum of money. A lot of cases concerned housing matters, encompassing issues such as outstanding rent payments and eviction. Other cases included restoration of disturbed possession, the payment of alimony or maintenance, or the release of items. In the field of non-contentious proceedings, there were mainly those concerning the declaration of a missing person as deceased, or the challenging of a notary deed, either declaring it as apparent, ineffective, or invalid. There were few commercial law cases, which demonstrates a decrease in business transactions, while cases pertaining to legal entity liquidation proceedings witnessed an increased.[54]

As regards criminal cases, the prevailing types in municipal courts included property crimes, mainly larceny. Many of the proceedings concerned damage to health, bodily injuries, or fights. As previously discussed when addressing the issue of the division of jurisdiction, virtually any type of criminal case could be heard by the Polish judiciary. That is why proceedings were conducted concerning homicide, robbery, rape, or sexual offences against minors.[55]

The flow of cases during the German occupation decreased significantly compared to the pre-war years. In the first years of the occupation, certain outstanding pre-war cases were still being processed. The regulation on the Polish judiciary introduced a requirement to pay a fee for the continuation of a civil case. Failure to pay the fee resulted in the inability to continue the proceedings; the case was deleted from the registry and transferred to the archives. The fee was charged in contentious cases and depended on the value of the subject matter in dispute.[56] The reduction in the inflow of cases resulted from several complex factors. The

[52] CAMR, Wille Report, 261.
[53] Wrzyszcz (2008) 400.
[54] Mielnik (2020b) 417–420.
[55] Mielnik (2020b) 409–417.
[56] Regulation on the Polish judiciary, §§ 14–15.

conditions of the occupation did not entirely eliminate legal transactions, newly concluded contracts, and legal relationships, but they did significantly reduce them. The already difficult situation was not improved by the overall harsh living conditions, which made it impossible to assert one's rights in court, travel to court, hire a lawyer, or pay court costs. The activities of the German authorities certainly also had an impact: the Jewish population appeared in court records until mid-1942, followed by notes related to the parties about »deportation to an unknown destination« or »impossibility to determine one's whereabouts«.[57] The expulsions of the Polish population in the Zamość region (southern powiats of the Lublin district), which began at the end of 1942, completely paralysed the activity of local municipal courts. In light of the research conducted on the Lublin district of the General Government, between 1938, the last full year of operation before the outbreak of war, and 1943, the last full year of operation of the Polish judiciary, the decrease in the number of new cases amounted to between 70 and 80 per cent.[58]

The organisational foundations of the Polish judiciary were regulated by German legislation imposed in the General Government, which made certain changes to the pre-war judiciary system. At the same time, in the field of law administered by Polish courts, pre-war Polish laws prevailed. Only from October 1942, after the entry into force of the regulation to simplify the criminal judiciary in the General Government,[59] intended to relieve the German judicial bodies, the Polish courts could adjudicate related to minor offences prohibited by the regulations of the governor-general. German prosecutors could transfer some of these cases to Polish courts. These were, for example, crimes introduced by the regulation on the protection of fields and crops dated 14 August 1941.[60] As regards these cases, Polish courts applied the provisions of the general part of the German Reich Penal Code of 1871, relating to the issue of penalties. In civil matters, the foundation for judgements remained the provisions of Polish law. However, there was a trend of civil law shifting towards public character, exemplified by the requirement to obtain permits for conducting specific legal acts and the introduction of restrictions on in-kind benefits in the GG.[61] As a consequence, the courts had to apply the legislation of the GG when settling cases.

The Polish courts were mostly staffed by pre-war judges, although there were some personnel changes. There was a noticeable process of hiring judges and lawyers from the western Polish areas that were directly incorporated into the Third Reich after 1939. For example, Witold Prądzyński, a notary from Poznań, became the head of the Court of Appeal in Radom. The number of ethnic Ukrainian judges who took up leading positions increased, with individuals like Bazyli Palidwor taking the role of the head of the District Court in Lublin. Palidwor was, in fact, involved in the establishment of the judiciary in Lublin after the crea-

57 Mielnik (2020b) 384–390.
58 Mielnik (2020b) 420–427.
59 Verordnung zur Vereinfachung der Strafgerichtsbarkeit im Generalgouvernement 24.10.1942, Dz. RGG 95, 667–669.
60 Verordnung zum Schutze der Fluren und Feldfrüchte 14.8.1941, Dz. RGG 75, 483.
61 Majer (2013) 523–531.

tion of the GG in 1939.[62] Another Ukrainian, Wołodymyr Zahajkewycz, a pre-war political activist, worked as a deputy head of the Court of Appeal in Kraków.[63] Following the establishment of the Galicia district, a significant number of judges who identified as Ukrainian relocated to this region to take up judicial positions. However, throughout the occupation period, the Galician judiciary faced challenges in fully staffing all judge positions.[64]

The judges who were to continue their duties had to make a declaration stating: »I declare that I will serve in the judiciary loyally and conscientiously in obedience to the German administration.« This was a prerequisite for continued employment. The requirement to make such a pledge stirred much controversy in the judicial community. Polish pre-war legal authorities were consulted during this period, including Stanisław Bukowiecki, President of the Office of the General Counsel, Mieczysław Siewierski, Prosecutor of the Supreme Court, Wojciech Trąmpczyński, the Marshal of the Sejm, and Professor Fryderyk Zoll of the Jagiellonian University[65]. All of them believed the operation and organisation of Polish courts was in the interest of society. As M. Siewierski recalled from his conversation with Witold Prądzyński after the war:

> Based on discussions that took place among my colleagues, I replied that from the legal point of view, the issue of reactivation of Polish courts within the limits of the GG regulation should be considered positively, and from the point of view of the interests of the society living under occupation, we should not evade working as part of the Polish judiciary under occupation, since otherwise this could lead to the inclusion of politically, ethically and professionally undesirable elements in the judiciary. However, also from the political point of view I saw nothing unacceptable in the work of Poles in the Polish judiciary under occupation, if it were a continuation of the pre-war Polish courts (...).[66]

This viewpoint shows a certain pragmatism, the necessity to protect the interests of the population, and the vision that it is better to continue working under German supervision than to consider the alternative to such a solution. It is worth noting that German judges had similar dilemmas after the Nazis came to power in 1933. Interestingly, they adopted a similar line of reasoning to Polish judges in 1939: resigning would not change anything but rather leave the field open to supporters of the regime.[67] Efforts were made to adjust the content of the declaration with the pre-war regulations applicable to judges. In the Radom and Warsaw districts, the German heads of justice departments in the offices of district heads gave verbal assurances that signing the declaration would not violate the principle of judicial independence in their adjudications. On this basis, the main board of the Association of Judges and Prosecutors recognized signing the declaration as admissible.[68]

Another issue is the participation of individuals in the judiciary who had signed the Deutsche Volksliste. The percentage of these judges was not high; these were isolated cases.

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62 Mielnik (2020b) 298–299.
63 Mielnik (2021a).
64 Służ (2014) 76.
65 SAR, Prądzyński Case, 1. Record of the interview of Witold Prądzyński of 17 March 1945.
66 SAR, Prądzyński Case, 26. Record of the interview of Mieczysław Siewierski of 18 April 1945.
67 Graver (2018) 851.
68 Mielnik (2020b) 73–74.

Educated lawyers of German origin were indispensable for the functioning of the German court and prosecutor's apparatus. Although, for example, in the Lublin district, the Volksdeutsche held managerial positions, which could have resulted from the local policy of the administrative authorities of the district. Those who signed the Deutsche Volksliste included Józef Ingersleben, head of the Court of Appeal in Lublin, Adolf Hubl, head of the District Court in Lublin, and Stanisław Cybulski, head of the District Court in Zamość. Judges Ingersleben and Cybulski were forced by the Germans to do so, and the fact of signing did not negatively affect their professional performance.[69] In the Krakow district, Jan Jek (Johann Jeck), a judge of the Court of Appeal in Krakow, was granted the Deutschstämmiger's status between 1942 and 1943, after which he was delegated to work at the German Prosecutor's Office (Deutsche Staatsanwaltschaft) in Krakow.[70] A different case was Judge Benon Pogoda, a Volksdeutsch, who had worked in the court in Bydgoszcz before the war. When he started working in the District Court in Lublin on 20 May 1941, he was not formally assigned any tasks and was most likely a Gestapo agent who was sentenced to death by the structures of the Polish Underground State. An unsuccessful attempt to execute the sentence was made in May 1944 by the Court of Appeal in Lublin.[71]

Indeed, further research is needed to explore the participation of judges adjudicating in the Polish courts and their involvement in the civil and military structures of the Polish Underground State. Such cooperation certainly took place. Worth mentioning are individuals like Adam Bień, who served as a judge of the District Court in Warsaw, while concurrently serving as the 1st Deputy Delegate of the Polish Government in exile and therefore one of the highest officials of the Polish Underground State.[72] The head of the Court of Appeal in Warsaw, Kazimierz Rudnicki, also cooperated with the Polish Underground State. His contributions included providing meeting spaces for the underground judiciary, preparing reports on the activities of the Polish judiciary, and even taking part in the ceremonies of oath to the Polish state pledged by new advocates during the occupation.[73] Within the Polish Underground State, there existed a structure of underground judiciary, both civilian and military, staffed by educated lawyers.[74] A certain form of cooperation, including the exchange of personnel, existed at the official and underground levels, but the scale of this phenomenon is unknown, and this issue requires further research. Judges and prosecutors who worked

[69] Mielnik (2020b) 290–296.

[70] NAK, Sąd Apelacyjny W Krakowie, ref. no. 156, not paginated. Wykaz osób przynależnych do narodu niemieckiego pracujących w Sądzie Apelacyjnym w Krakowie. One of the judges working during German occupation who signed the Volksliste was also Doctor Emil Krynicki (Municipal Court in Krakow, a judge in the Municipal Court of Lwów Zamiejski before the war).

[71] Moszyński (2014) 456–457.

[72] Bień (1983) 155–156; Bień (1984) 7. Adam Bień writes in his memoirs as follows: »The Germans did not interfere with our judiciary as they considered it good and trustworthy«.

[73] Bayer (1968) 53–54.

[74] On this topic, see: Szerkus (2019).

within the Polish judiciary also cooperated with Polish military structures - the Home Army, often paying the highest price for such involvement[75].

The number of judges working in the courts decreased by about 20% compared to 1939.[76] All the statistics mentioned below were compiled for the Lublin district; there is a high probability that they are representative of the other four primary districts of the GG. Further research is still needed for the Galicia district due to its ethnic specificity and local policies. The number of hired judges decreased from 128 in 1939 to 99 in 1942 and 1943, and further to 94 in 1944. Some judges transitioned to other legal professions, while others had to change their place of residence. Additionally, a portion of them were replaced by lawyers from the annexed territories. Between 1939 and 1943, approximately 51.65% of judges (66 out of 128) continued working in the same courts, comprising 66.6% of the judiciary staff in 1943 (66 out of 99).[77] It should be kept in mind that around 25% of lawyers (including judges, prosecutors, advocates, notaries, and other lawyers employed in courts) either died or went missing during the occupation.[78] This estimate is based on the data from the Lublin district, where the number of lawyers in 1939 was approximately 540, with 111 reported as deceased and 33 as missing. These estimates correspond to the number of losses suffered during World War II by the pre-war intelligentsia of the Second Polish Republic (regardless of ethnic origin).[79]

4. Jewish actors in the Polish (non-German) courts in the General Government

On July 10, 1942, a divorce lawsuit was filed with the Lublin District Court, signed by lawyer Stanisław Radzki, acting on behalf of Fajga Finkielsztejn. The lawsuit was directed against Fiszel Finkielsztejn. Before submitting the lawsuit to the civil court, the parties obtained a religious divorce granted by Rabbi Hersz Mejlech Talmud. On July 21, 1942, the Lublin District Court issued an »in the name of the law« verdict, officially declaring the divorce between Fajga and Fiszel Finkielsztejn.[80] The case might not have been unusual, except for the date of filing the lawsuit – July 1942. The parties provided the "Majdan Tatarski settlement" as the address for deliveries, a residual ghetto established in mid-April 1942, after the

75 An example could be the case of Judge Stefan Lelek-Sowa, judge of the Court of Appeal in Lublin, one of the founders of the Lublin branch of the Union of Armed Struggle, executed in June 1940. The other case involved prosecutor Dr. Bogusław Selim-Bojarski, publicly executed in November 1943 in Biała Podlaska by German police for his involvement in the resistance movement. Mielnik (2020b) 428.

76 Ibidem 284.

77 Ibidem.

78 Ibidem 316–320.

79 Ibidem.

80 SAL, Sąd Okręgowy w Lublinie 1940–1944. Wydział Cywilny, sygn. 668 1–11.

liquidation of the ghetto in Podzamcze, Lublin (March 17, 1942). This was a moment when the majority of the Jewish community in Lublin had been exterminated.[81] Furthermore, to better contextualize the event - on July 22, 1942, the day after the Lublin court issued its verdict, the Grossaktion, which was the liquidation of the Warsaw Ghetto, began. Jews, as far as the circumstances allowed, could therefore appear before Polish courts practically from the inception of these courts until the last months of their "official" presence in the GG territory. Why was such a situation possible, where individuals deprived of their basic human rights could simultaneously seek their legal rights through the court process?

The Polish judiciary was intended to hear judicial cases of non-German people residing in the area of the General Government, therefore including Jews. The practice of the Jewish population standing before Polish courts requires extensive historical and legal research based on archival material.[82] According to the current state of knowledge, Polish courts were probably not institutionally involved in the expropriation, let alone in the direct extermination, of the Jewish population. This statement holds for institutional and organised activities. This opinion does not negate the fact that individual Polish advocates, judges and other legal professionals participated in the confiscation of Jewish property, mainly as trustees (Treuhänder) of such property.[83] This issue has already been described in relevant literature.[84] On the other hand, there are also known instances of behaviours of the opposite nature, such as professional solidarity with Jews who were banned from the professions.[85]

The legal situation of the Jewish population in the GG was undoubtedly unique, as numerous legal acts relating exclusively to this category of population were introduced. These acts were characterised by racism, repression and arbitrariness.[86] At the same time, pre-war Polish law was still in force, which was the basis for the regulation of civil law and economic relationships. From a legal history perspective, comprehensive research is necessary to ascertain the legal and procedural status of the Jewish population in the GG. It should be

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[81] Silberklang (2022) 350–351.

[82] A contribution to further study include the following: Jarkowska (2022) 163–190; Wiatr (2015) 494–502.

[83] This is about the so called receivership-chasing (Polish: *komisarszczyzna*). According to an account published in the official bulletin of the Polish Underground State: »(…) Warsaw lawyers have other trouble. German operatives have for a long time carried out a selection in the lawyers' community towards the fulfilment of the occupant's goals. Currently, some Warsaw advocates and court employees are being granted administration of Jewish houses as a benefit for the ›right-minded‹. Polish society will keep track of the struggle of characters which now begins within one of our most populated professions«. »Biuletyn Informacyjny«, 19 July 1940.

[84] Grabowski (2007); Grabowski (2014).

[85] In February 1940, fourteen Polish lawyers who were members of the Advisory Council (*Beirat*) negatively assessed in writing the exclusion of Jewish lawyers from the profession. As a punishment, they were struck off the list of lawyers. As part of the repression for the negative attitude towards the exclusion of Jewish lawyers from the bar, in July 1940 about 70 Warsaw lawyers were arrested, some of whom were then transported to KL Auschwitz as part of the first Warsaw transport to that camp. Among them was advocate Edmund Wojciechowski, son of the pre-war President of the Republic of Poland Stanisław Wojciechowski, who died in the camp on 23 February 1941. Redzik (2012).

[86] Wrzyszcz (2014b).

examined whether this status differed between different districts. According to an analysis of individual case files, the Jewish population used to bring lawsuits before Polish courts to resolve legal conflicts that arose. This occurred despite the existence of a developed and amicable justice system formalised in the Jewish Councils (Judenräte) and informal dispute resolution methods, mainly exercised by rabbis. The reason for this was probably the possibility of having a final ruling, which enabled effective enforcement[87]. Cases like these demonstrate that the Polish judiciary in the General Government was not universally viewed as negative by the Jewish population. The Jewish population, to some extent, made use of the available opportunities to assert their rights.

Polish courts were the place of contact between two worlds, the best example of which, a tangible one, was the courthouse on Leszno Street in Warsaw, located at the boundary of the Warsaw ghetto. The Ringelblum Archive contains, among other records, the following account:

> It is not commonly known that there is a huge court building at Leszno 51/53 [53/55], from the Jewish side adjacent to Ogrodowa and Biała streets. As it happens, the Aryan side begins from Biała Street, and the Jewish side (the ghetto) from Leszno Street. The courthouse, of course, is where the biggest deals are being made. Jews enter on one side, Christians on the other. This arrangement is used by smugglers who conduct large-scale smuggling there. Better goods are smuggled in. In particular, Jewish-Polish transactions covering all kinds of trade and smuggling take place there. And all this happens under the watchful eye of »Themis«.[88]

The possibility of participating in court hearings after the closure of the ghettos was a surprise even for the Jewish population. In the Ringelblum Archive, there are preserved memoirs from Zygmunt Millet, a pre-war Jewish lawyer from Warsaw: »It was a mystery and a surprise for us when, after the ghetto was closed, the Leszno Court remained open to Jews (…)«.[89] However, the possibility of pursuing their rights through legal means was primarily influenced by the factual circumstances, the anti-Semitic and racist polices enforced by the German authorities since the beginning of the occupation, and a multitude of administrative and police restrictions. Already by mid-December 1940, in the records of activities of one of the district courts in the Radom district, it was noted that: »Due to restrictions on jews [in original text, also in lowercase – noted by the author], the jewish population has altogether ceased to engage in litigation«.[90] The possibility of appearing before the courts was influenced, for example, by the prohibition on using public transportation.[91] However, an official court summons did constitute permission to use public transportation for travel outside the designated area. Simultaneously, Kurt Wille was pressuring the Polish judicial authorities:

> Summoning a jew should be suspended if his interrogation is not absolutely necessary. If the interrogation cannot be avoided, it must be assessed on a case-by-case basis whether the jew can comply with the

[87] Mielnik (2020b) 384–390.
[88] Epsztein (2016) 148.
[89] Person (2011) 431.
[90] Domański (2022) 276.
[91] Verordnung über die Benutzung öffentlicher Verkehrsmittel durch Juden im Generalgouvernement, 20.02.1941, Dz.RGG, no 16, pp. 69–70.

> summons without using public transportation (for example, by walking for several hours). [If] it turns out that he can be required to walk from his residence to the place of summons, or if there is no need to use public transportation for another reason, then the summons should indicate: »This summons does not entitle the use of public transportation«.[92]

Official summons to court hearings were valuable documents that allowed the Jewish population to leave the ghettos. In May 1941, Witold Prądzyński, the head of the Court of Appeal in Radom, issued a special directive indicating that court summons were being somehow utilised to facilitate the departure of Jews from the ghettos:

> I have received confidential information about the misuse of official court summons forms by court personnel for non-official purposes, such as facilitating the exit of Jews from the Jewish district (ghetto). I will not tolerate such abuses of official position, and in the event of similar occurrences, the official, or alternatively, the bailiff, will be immediately dismissed from judicial service, in addition to facing legal consequences.[93]

In the literature, there are theses suggesting that Polish courts were impartial towards Jewish defendants, especially in criminal cases, and were characterised by judicial professionalism.[94] A similar approach can be observed in some civil cases as well.[95] There are also theses regarding clear anti-Semitic attitudes among Polish judges.[96] It is not possible to discuss the above issues without considering the context in which disputes were resolved. The actual conditions in the GG, determined by an extremely anti-Semitic policy towards the Jewish population, strongly dominated over pre-war legal regulations. At the same time, allowing the Jewish population to access the judicial process and protecting their rights was a manifestation of the normative sphere left in the GG, within which Polish courts operated.

There are many research questions on this issue, including the following: What was the judicial practice of Polish courts in cases involving the Jewish population? In what civil and criminal cases were Jews involved most often? What did the issues of appearing before the courts after establishment of ghettos look like? Did the German authorities (the police, SS, and administrative apparatus) interfere in the proceedings of Polish courts concerning the Jewish population, and to what extent and by what specific authorities? Questions of a more sociological and legal nature are also important: what was the attitude of the court and witnesses to the Jewish population, and what was the attitude of the Jewish population towards Polish courts. The answer to these, and probably many other, research questions requires extensive archival research and more detailed studies. The files of proceedings from Polish courts, which are numerous and well-preserved, contain unknown documents, witness testimonies, and other judicial evidence. They constitute a rich, yet unexamined, source of information. These documents shed light not only on legal issues in the broader sense but also on the general situation of the Jewish population in the GG during the Holocaust.

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92 SAZ, Prokuratura Sądu Okręgowego w Zamościu 1940–1944, sygn. 1, 241.
93 Domański (2022) 278.
94 Grabowski (2007); Domański (2022).
95 Wiatr (2015).
96 Asselin (2021).

5. Attempt of assessment of the Polish (non-German) judiciary in the General Government in 1939-1945

After the end of the German occupation in 1945, the authorities of communist Poland upheld the rulings issued by Polish courts.[97] However, there were certain grounds entitling the parties involved to challenge the judgements issued during the Second World War. In general, the communist authorities positively assessed the attitude of judges and the activity of the Polish judiciary during the German occupation. Leon Chajn, who in 1944 held the position of deputy head of the Ministry of Justice in the Polish Committee of National Liberation, even wrote that:

> It must be put honestly – the Polish judiciary stood firm against the corrupting and demoralising effects of the occupation. They were patriotic and morally pure. (...) These three factors characterising the Polish judiciary – moral purity, a patriotic stance, and the fight for the rule of law – have made the judiciary a natural ally of the democratic camp.[98]

However, this viewpoint was the opinion of the person responsible for organising the judiciary in a new reality, and it may not have been entirely objective. It was impossible, even for the communist authorities, to completely nullify all the judgements issued during the war and exclude from the profession all the judges for the mere fact of working in the judiciary between 1939-1945. This would have resulted in chaos and legal uncertainty. The work in the courts during the German occupation was not clearly identified as collaboration or cooperation with the German authorities. More important than the mere fact of being employed in the justice system was the particular manner in which professional duties were performed. The Polish Supreme Court has even ruled on this issue.[99]

Many judges continued working in the judiciary under the new political circumstances after 1945. In the first half of the twentieth century, there was a generation of judges in Polish courts who were educated at the universities of Imperial Russia, Imperial-Royal Austro-Hungary, or Imperial Germany. They initiated their judicial careers in these countries and later continued to serve in democratic Poland after its rebirth in 1918. However, as Poland's political landscape shifted towards authoritarianism after 1926, they found themselves in the realities of two totalitarian regimes: the Nazi regime during the period from 1939-1945 and

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[97] Dekret z dnia 6 czerwca 1945 roku o mocy obowiązującej orzeczeń sądowych, wydanych w okresie okupacji niemieckiej na terenie Rzeczypospolitej Polskiej, (Dz.U. RP Nr 25, poz. 151)

[98] Chajn (1945) 20–21.

[99] The Supreme Court stated in 1949 (judgement K.70/49) : »The category of acts under Article 2 of the Decree also covers crimes, which in common language are called overzealousness in performing certain legal actions by Polish functionaries operating during the occupation as part of the imposed occupation system. Every action of the aforementioned Polish functionaries who belonged to such authorities as the prosecutor's office, judiciary, tax administration, local government administration and Polish Blue Police, even if formally in accordance with the provisions of normal pre-war proceeding, but going beyond acting in the exclusive interest of the Polish nation and society during the occupation period, is a criminal action«.

the Stalinist[100] regime until the early 1950s. This was the history of, among others, Judge and prosecutor Kazimierz Rudnicki mentioned above. In the Second Polish Republic, he was the prosecuting counsel in the case of Eligiusz Niewiadomski, the murderer of Gabriel Narutowicz, the first President of the Republic of Poland after regaining independence. During the German occupation, he headed the Court of Appeal in Warsaw while cooperating with the Polish underground authorities. After the end of World War II, he was a judge of the Supreme Court[101]. The vicissitudes of that generation, often affected by private tragedies and difficult career choices, show the complex history of the Polish state in that period.

Sources describing the attitudes of judges in 1939, in addition to the above-described dilemmas related to signing declarations, indicate that judges considered their profession as a service to society, but within the limits of the law. On 7 November 1939, shortly after the formal establishment of the GG, a gathering of all judges and prosecutors residing in Lublin was held in that city. The meeting was chaired by Judge Boleslaw Sekutowicz,[102] and it was intended to discuss the current situation and decide whether to continue working. Remigiusz Moszyński, one of the participants of the meeting, reported on it in his diary as follows:

> Everyone came to the conclusion that there was a need to provide the Polish population with some kind of legal protection; that it would be better if cases were heard by a Pole, examining the substance of the case, and not by a hostile German. At the same time, however, it was pointed out that the Courts must be independent, that as long as they proceed in the German language or in the name of German authority and not under the European, neutral formula »in the name of the law«, or as long as declarations of allegiance violating our relationship to our State were required, we would not officiate.[103]

Were these conditions met? To a certain extent, certainly yes. As already discussed, in cases that were not within the interest and concern of the German authorities, Polish courts were granted a certain degree of independence. They did not issue rulings at the behest of the German authorities, nor did they implement political directives, as the German courts in the GG did. The Polish judiciary did not hold conferences of judges and prosecutors, as was practised in the Third Reich, nor were there any judge letters (Richterbriefe) issued ordering the issuance of ideologically oriented rulings. However, it is difficult to speak of the absolute autonomy and independence of the Polish courts, given the way the entire judicial system in the GG was built. Any judgement could be overturned by German courts at the request of the justice ministry authorities. In criminal cases, the Polish courts decided only cases filed by the German prosecutor's office. From the defendant's perspective, the choice of judicial

100 For more on Poland in the first years after the German occupation, see: Zaremba (2022). A comprehensive study on the judiciary during the period from 1944 to 1950 and the application of the law is provided by Jakubowski (2002) and Kładoczny (2004).

101 Korczyk (1991) 636–637.

102 B. Sekutowicz was executed by firing squad less than two months later, on 23 December 1939, as part of the Intelligenzaktion. On that day, Stanisław Bryła, the president of the District Court in Lublin, with advocates Władysław Rutkowski and Edward Lipski were also murdered, as well as professor of philosophy of law Czesław Martyniak, who had criticized Hans Kelsen's pure theory of law from Thomistic positions.

103 Moszyński (2014) 64–65.

path determined the possibilities of a viable defence and the range of penalties for the act in question. This system effectively undermined the fundamental principles of criminal law.

6. Conclusion

The Polish courts operated mainly under and within the limits of the law, predominantly the law in force in the Polish lands before 1939. They resolved civil cases concerning parties that were not recognized as German and handled criminal cases that were beyond the interest of the German authorities. The Polish judiciary was subject to official and substantive supervision by the German occupation authorities. Their role was, therefore, not fully independent. These courts provided jobs to Polish and Ukrainian lawyers, judges, prosecutors, advocates, and court officials as well. They also allowed the population of the GG to effectively settle legal disputes, pursue claims, and seek basic justice. One can even find in the literature certain metaphors saying that in the face of such immense occupation lawlessness, the work of courts adjudicating according to pre-war law was a beacon of hope, a place where »Polish law reigned [exact phrase used in the original, as noted by the author]«.[104] However, one cannot overestimate the role of this judiciary, as it played a relatively minor role in the overall context of the occupation and was limited to settling everyday legal disputes. Indeed, while these courts may have had a limited role, they undoubtedly had a significant impact on the lives of individual residents of the GG by helping to resolve their everyday legal disputes among non-Germans.

Despite having a certain degree of autonomy and acting within the law, the functioning of the Polish judiciary was influenced by the policies of the German authorities pursued in the General Government. At the same time, it should be emphasized that Polish courts were not an instrument of those policies. For example, due to economic exploitation, it was impossible to adjudicate in-kind benefits, agricultural land division proceedings were interfered with, and the courts also made declaratory entries in land registers regarding the seizure of Jewish properties. The housing policy resonated in court practice, hence the large number of cases concerning evictions, payment of rent, and other related matters. Polish courts were also involved in the ethnic policy conducted in the General Government. The German administration exacerbated Polish-Ukrainian disputes, even allowing, for example, a preference for the Ukrainian language. Excluding certain categories of prohibited acts from the jurisdiction of Polish courts was part of the implementation of the Nazi penal policy. These categories included severe punishment of habitual or violent offenders, among others. This undermined the fundamental principles guaranteeing justice in criminal law. The operation of the Polish judiciary requires further in-depth archival research. The activities of Polish courts and the court files indeed offer a valuable research source that can broaden the

[104] Pędowski (1993) 75.

knowledge of everyday life and social conditions under German occupation. This is particularly important for understanding the challenges and experiences of the Jewish population in these circumstances.

The Polish courts, in a way, constituted a continuation of the pre-war activities of the general judiciary of the Second Polish Republic. Similar solutions were imposed in other European countries occupied by Nazi Germany. A distinct difference, when comparing the courts in various occupied countries, was the conditions under which these courts operated. The influence of the occupation policy and terror on the activities of the courts in the GG was incomparably greater. The prevailing circumstances thus had an impact on judicial independence. Furthermore, there was also a much greater subordination of the courts in the GG to German authorities, as exemplified by the dissolution of the highest-level court. Simultaneously, when assessing the operations of Polish courts in the GG from the perspective of other institutions that continued their pre-war activities during the occupation, attention is drawn to a fairly high level of autonomy. Nevertheless, it should be noted that this autonomy was only implemented within clearly defined limits.

Finally, it is worth answering the question of why the Germans decided to establish the Polish judiciary in the GG at all. At the outset of the occupation, it was probably about maintaining a facade of compliance with international law concerning German actions in the occupied territories. After France's defeat in mid-1940, this argument became completely irrelevant, and a thesis emerged regarding the debellatio of the Polish state, symbolically marked by an official change in the name of the General Government. The alternative to the establishment of an occupation judiciary was to govern through police measures repression.[105] In addition to becoming a »reserve« for Poles, Ukrainians, and Jews, the GG area was intended by the German authorities as both a source of cheap labour and as a breadbasket for the Reich, intended to supply food products for the needs of the German state.[106] To this end, efficient agricultural production was necessary. This required transactions related to goods, agricultural land, and various legal activities, as well as the protection of undisturbed possession and ownership. Against this backdrop, disputes could have arisen, and crimes such as theft could have been committed etc. Kurt Wille wrote that the creation of the Polish judiciary resulted from the »(…) observed fast-growing economic life with its legal needs as well as from experience rooted in practice«.[107] The German authorities sought an unimpeded and efficient economic output. Consequently, the decision to preserve the judiciary with a certain degree of autonomy, adherence to the rule of law, and tolerance for judicial opposition was intended to enable more efficient exploitation of the population living in the territory of the GG.[108]

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105 Majer (2013) 261–270.
106 Madajczyk (1970) passim.
107 CAMR, Wille Report 256.
108 Majer (2013) 487–490; Wrzyszcz (2008) 64.

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